

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS (13 CCR), DIVISION 2, CHAPTER 6.5,
AMEND ARTICLE 1, SECTIONS 1202.1 AND 1202.2, AND ARTICLE 6, SECTION 1232.

MOTOR CARRIER SAFETY REGULATIONS - CONSISTENCY WITH TITLE 49, CODE OF FEDERAL REGULATIONS (CHP-R-06-10)

PURPOSE OF REGULATORY ACTION

California Vehicle Code (CVC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 32002, 34501, 34501.2, and 34501.5 CVC authorize the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 CVC, which are commercial vehicles commonly referred to as “regulated” vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

This rulemaking action adopts the current publishing date of federal regulations incorporated by reference. This rulemaking action will eliminate state regulations that conflict with updated federal regulations in Title 49, Code of Federal Regulations (49 CFR), thereby allowing California businesses to compete with out-of-state businesses under identical safety rules. This will eliminate the possibility of California businesses being required to follow out-of-date federal regulations for their intrastate operations, but to switch to current federal regulations when operating in interstate commerce. Additionally, these businesses will no longer need to retain multiple publishing dates of federal regulations for the purpose of determining compliance with California regulations.

SECTION BY SECTION OVERVIEW

Article 1. Definitions and General Provisions.

Section 1202.1. Applicability of Federal Regulations.

The proposed regulatory amendments incorporate by reference the October 1, 2006, edition of 49 CFR, providing uniformity between state and federal transportation regulations. Changes in the federal regulations between the current October 1, 1997, publishing date and the proposed October 1, 2006, publishing date are as follows:

Section 385.415, What operational requirements apply to the transportation of a hazardous material for which a permit is required? The Federal Motor Carrier Safety Administration has established a national safety permit program for motor carriers that transport certain hazardous

materials in interstate *or* intrastate commerce. A June 30, 2004, Final Rule (69 FR 39372) implemented certain provisions of federal hazardous materials transportation law. The rule was intended to promote safe and secure transportation of the designated hazardous materials and thereby improve motor carrier safety.

Federal hazardous materials transportation law, 49 U.S.C. 5101 et seq., was enacted “to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce.” The Federal Motor Carrier Safety Administration (FMCSA), formerly part of the Federal Highway Administration (FHWA), is responsible for implementing certain provisions of this law, including Sec. 5105(e), Inspections of Motor Vehicles Transporting Certain Material.

To implement the pre-trip inspection requirement in 49 U.S.C. 5105(e), FMCSA proposed inspection standards similar to those contained in the North American Standard (NAS) Level VI Inspection developed by the Commercial Vehicle Safety Alliance (CVSA) for radioactive shipments. The pre-trip inspection is required to be performed by a government inspector, that is, an inspector employed by or under contract to a federal, state or local government. The inspection is required to cover all applicable requirements in the Hazardous Materials Regulations (HMR) and in the Federal Motor Carrier Safety Regulations (FMCSR); including 49 CFR parts 383 (commercial driver's license), 391 (driver qualifications), 395 (hours of service), 393 and 396 (vehicle condition), or compatible state regulations. The inspection is also required to cover provisions in the HMRs on the transportation of radioactive materials (49 CFR parts 171, 172, 173, and 178) and registration (49 CFR part 107, subpart G).

It is important to note; the safety permit program is applicable to intrastate as well as interstate motor carriers. Intrastate motor carriers subject to the safety permit must apply for a USDOT number and will be subject to a compliance review. The safety rating issued to the intrastate motor carrier, by the FMCSA, is for the safety permit process only and, unless specifically noted, will be calculated based on State violations equivalent to FMCSA's list of critical and acute violations. Beyond the requirements to obtain a USDOT number and submit to a compliance review, the intrastate motor carrier seeking a safety permit will generally not be subject to any additional safety regulations under the FMCSRs (such as driver qualification requirements in 49 CFR part 391) that did not apply to such carriers before the federal final rule. However, the FMCSA has indicated several sections of the federal regulations will eventually be modified to include intrastate motor carriers subject to the permitting requirements. Those revisions may include; 49 CFR, Section 385.3 (definitions), Section 385.5, Safety Fitness Standard, and Appendix B to Part 385.

In order to provide uniformity between state and federal regulations, and because intrastate motor carriers, transporting Highway Route Controlled Quantities (HRCQ) of Radioactive Materials are already subject to 49 CFR, Section 385.415, the CHP is proposing to adopt 49 CFR, Section 385.415, requiring that shipments containing highway route-controlled Class 7 (radioactive) materials undergo a pre-trip inspection. The standards for this inspection are contained in the North American Standard (NAS) Level VI Inspection for Radioactive Shipments. As already indicated, the pre-trip inspection must be performed by a federal, state, or local government inspector, or an inspector under contract with a federal, state, or local

government. The inspector must have completed an appropriate training program of at least 104 hours, including at least 24 hours of training in conducting radiological surveys on inspecting vehicles transporting HRCQ radioactive materials. The inspection must cover all applicable requirements in the HMRs; the FMCSRs, including 49 CFR Parts 383 (Commercial Driver's License), 391 (Driver Qualifications), 395 (Hours of Service) and, 393 and 396 (Vehicle Condition); or compatible State regulations. The pre-trip inspection will also include provisions in the HMRs on the transportation of radioactive materials (49 CFR Parts 171, 172, 173 and 178) and registration (49 CFR part 107, subpart G).

Section 392.16, Use of Seat Belts. This Section remains unchanged. However, the October 1, 2006, edition will be adopted for consistency with the remainder of the section.

Section 392.42, Notification of License Revocation. As the result of a 1998 rulemaking (63 FR 33279, June 18, 1998), the FHWA moved the requirement for a driver to notify the employing motor carrier of a license revocation, previously addressed in Section 392.42, to Section 391.15(b)(2), repealing Section 392.42. The agency also changed the title of paragraph (b) to "Loss of driving privileges." The change was proposed because the section addresses conditions relating to driver disqualification, rather than general safe driving provisions.

For this reason the CHP proposes to repeal the 13 CCR reference to Sec. 392.42, and adopt the reference to Sec. 391.15, relative to subparagraph (b)(2) and the driver notification requirements following the loss of that driver's driving privileges.

Section. 392.60 Unauthorized Persons Not to be Transported. This section remains unchanged. However, the October 1, 2006, edition will be adopted for consistency with the remainder of the section.

Section 393.86, Rear-end Protection. During a 1999 rulemaking (64 FR 47708, effective on October 1, 1999) the FHWA amended the Federal Motor Carrier Safety Regulations (FMCSRs) to require that certain trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards must be installed to ensure that the trailer or semitrailer meets the rear impact protection requirements of FMVSS No. 224. This rulemaking was intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer. With regard to trailers and semitrailers manufactured before January 26, 1998, motor carriers are not required to retrofit a rear impact guard that conforms to FMVSS No. 223. However, motor carriers operating these trailers and semitrailers are required to continue complying with the FMCSA's requirements for rear end protection on CMVs that are not covered by FMVSSs Nos. 223 and 224.

On January 24, 1996, (61 FR 2003), the National Highway Traffic Safety Administration (NHTSA) published a final rule creating FMVSSs Nos. 223, Rear Impact Guards, and 224, Rear Impact Protection. The requirements apply to trailers and semitrailers manufactured on or after January 26, 1998.

The first standard, FMVSS No. 223, specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. It specifies strength and energy absorption requirements for the impact guards as well as test procedures that manufacturers and the NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that the device meets the requirements and to provide instructions on the proper installation of the guard.

The second standard, FMVSS No. 224, requires that most new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting FMVSS No. 223. Requirements for the location of the guard relative to the rear end and sides of the trailer are also specified in the vehicle standard. In addition, the vehicle standard requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

On January 26, 1998, the NHTSA issued a final rule responding to petitions for reconsideration of the 1996 final rule, and making technical amendments to the rear impact guard requirements (63 FR 3654). The 1998 final rule clarified the applicability of the energy-absorption requirements with regard to cargo tank motor vehicles, as defined in 49 CFR Section 171.8, excluded pulpwood trailers from the rear impact protection requirements (a definition of pulpwood trailer was added to FMVSS No. 224), and revised the definition of special purpose vehicle.

On May 14, 1998, the FHWA proposed amending Section 393.86 to ensure that the rear impact protection requirements of the FMCSRs were consistent with the FMVSSs and to improve the safety of operation of CMVs by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer (63 FR 26759). The agency indicated that this action is necessary because the FMVSSs are applicable only to vehicle and vehicle component manufacturers. In the absence of an amendment to the FMCSRs, there would be no federal requirement that motor carriers maintain their trailers to conform to the rear impact protection requirements of FMVSS No. 224, or repair damaged rear impact guards. Motor carriers could also replace rear impact guards with devices that failed to comply with the NHTSA requirements.

Section 393.93, Seats, Seat Belt Assemblies, and Seat Belt Assembly Anchorages. The CHP proposes to repeal the reference to 49 CFR, Section 393.93. Section 27315 VC was amended in 2004 and again in 2005 to require seatbelt assemblies to comply with the same federal FMVSSs referenced in 49 CFR, Section 393.93. The enactment of these legislative amendments also expanded the applicability of Section 27315 to include commercial motor vehicles. For this reason, the CHP contends the continued adoption of 49, CFR 393.93, is duplicative and unnecessary.

Section 396.11, Driver Vehicle Inspection Reports. As the result of a 1998 rulemaking (63 FR 33279, June 18, 1998), the FHWA made several changes to the specific subsections to Section 396.11. Those changes are as follows:

Section 396.11(b), Driver Vehicle Inspection Report(s); Report Content. The amendments to this paragraph were editorial in nature (“vehicle” for “motor vehicle” and “report” for “vehicle inspection report”).

Section 396.11(c), Corrective Action. The amendments to this paragraph made the language consistent with other parts of the FMCSRs (“prior to operating” was replaced with “prior to requiring or permitting a driver to operate”).

Sections 396.11(c)(1) Through (c)(3), 396.11(d), and 396.13(b), Concerning Driver Vehicle Inspection Report(s). The FHWA removed Section, 396.11(c)(3), requiring a legible copy of the last driver vehicle inspection report (DVIR) to be carried on the power unit. Other paragraphs within the section were also revised to reflect this change. The agency believed the administrative burden of requiring the DVIR to be carried on the power unit outweighed its benefits. The NPRM stated that the presence or absence of a DVIR was not a factor in the decision to conduct a roadside inspection of a CMV and noted that failure to have the DVIR is not an out-of-service violation under the Commercial Vehicle Safety Alliance North American Out-of-Service Criteria. However, the FHWA emphasized that the proposed removal of the requirement was not intended to affect the driver's access to the DVIR and the requirement for the driver to review it before driving a CMV.

Section. 396.17, Periodic Inspection. This section remains unchanged. However, the October 1, 2006, edition will be adopted for consistency with the remainder of the section.

Section 397.17, Tires. As the result of a 2002 rulemaking (67 FR 62192, October 4, 2002), the FMCSA repealed the outdated requirement for certain motor vehicle operators to stop periodically to check their tires. It was believed that eliminating this requirement enhances the security of hazardous materials shipments.

After the terrorist attacks of September 11, 2001, the FMCSA and the Research and Special Programs Administration (RSPA) reviewed government and industry hazardous materials transportation safety and security programs with a view towards identifying areas where security should be enhanced. Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments, approximately 95 percent (95%), are made by highway. The FMCSA and RSPA concluded that many of the hazardous materials transported by motor carriers potentially could be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

For a number of years, Section 397.17 of the FMCSRs required periodic tire inspections for certain vehicles transporting hazardous materials. Drivers of vehicles with dual tires were required to stop every two hours or 100 miles to inspect the tires. When originally promulgated, this requirement was intended to prevent possible fires caused by overheated tube-type tires. However, with advancements in tire technology, fires caused by tire overheating occur much less frequently.

It was believed that to require a vehicle transporting a hazardous material to stop at frequent regular intervals increases the security risk associated with such transportation. Any stop provides an opportunity for potential highjacking or theft of the vehicle and its cargo. Eliminating the tire check stop reduces this potential security risk. For these reasons, the requirement to stop every two hours or 100 miles in order to inspect a transport vehicles tires was repealed. However, the remaining requirements, relative to tires, remain unchanged.

Section 397.19, Transportation of Hazardous Materials; Driving and Parking Rules; Instructions and Documents. As the result of a 1998 rulemaking (63 FR 33279, June 18, 1998), the FHWA amended the text of this section to remove the reference to the motor carrier's principal place of business in paragraph (b). The effect of this change is to allow motor carriers with multiple terminals or offices to maintain all records required by 49 CFR, Subchapter B, at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or another specified location within 48 hours after a request has been made by a special agent or authorized representative of the FMCSA.

Section. 397.67 Motor Carrier Responsibility for Routing. This section remains unchanged. However, the October 1, 2006, edition will be adopted for consistency with the remainder of the section.

Section 1202.2. Applicability of Federal Regulations. The proposed regulatory amendments incorporate by reference the October 1, 2006, edition of 49 CFR, providing uniformity between state and federal transportation regulations. Changes in the federal regulations between the current October 1, 1997, publishing date and the proposed October 1, 2006, publishing date are as follows:

Section 385.415, What Operational Requirements Apply to the Transportation of a Hazardous Material for Which a Permit is Required? The rational for adopting this section for interstate motor carriers are for the same reasons listed in Section 1201.1.

Section 393.86, Rear-end Protection. Changes to this section are for the same reasons as stated for Section 1202.1.

Section 396.11, Driver Vehicle Inspection Reports. Changes to this section are for the same reasons as stated for Section 1202.1.

Section 396.13, Driver Inspection. As the result of a 1998 rulemaking (63 FR 33279, June 18, 1998), the FHWA amended 49 CFR, Section 396.13(b), by removing the language that the last DVIR is required to be carried on the power unit. The FHWA believed that the presence or

absence of a DVIR in the power unit was not a primary factor in a decision to conduct a roadside inspection.

Section 397.17, Tires. Changes to this section are for the same reasons as stated for Section 1202.1.

Section 397.67 Motor Carrier Responsibility for Routing. Changes to this section are for the same reasons as stated for Section 1202.1.

Article 6. Carrier Requirements.

Section 1232. Vehicle Inspection and Maintenance.

The proposed regulatory amendments incorporate by reference the October 1, 2006, edition of 49 CFR, regarding qualifications of airbrake inspectors. No changes have occurred on this matter in the federal regulations since October 1, 1997, but absent this change in the equivalent California regulation, motor carriers would need to retain their 1997 editions of the federal regulations solely to read this reference.

STUDIES/RELATED FACTS

None.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON BUSINESS

The CHP has not identified any significant adverse impact on businesses since these changes either maintain reasonable exceptions for carriers not directly subject to federal jurisdiction (to minimize the impact on business) or they simply adopt federal regulations, by publishing date, that already apply to the majority of the regulated community, thereby eliminating a conflict between state and federal regulations.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative, that would be more effective and less burdensome for the purpose for which this action is proposed.

Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

Alternatives Identified and Reviewed

1. Amend the existing regulations for consistency with the federal regulations.
2. Change statutes to directly require compliance with federal motor carrier safety regulations as these regulations now exist or are hereafter amended, in lieu of the existing delegation of rulemaking prescribed in Section 34501(b) CVC. This alternative would eliminate the present state regulatory mechanism which provides for the adoption of exceptions to the FMCSRs presently adopted by reference in 13 CCR. The CHP also retains discretion to promulgate regulations and/or exceptions for carriers not subject to federal jurisdiction (i.e., non-commercial or governmental).
3. Make no changes to the existing regulations. This could result in federal preemption of California's Motor Carrier Safety Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the FMCSRs would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would in itself represent a negative impact on public safety.

ECONOMIC IMPACT

The CHP has determined these regulatory amendments will result in:

- No increased costs for motor carriers directly subject to federal jurisdiction as previously discussed. This rulemaking action will simply allow the state to enforce federal regulations that already apply, but are enforced currently only by federal inspectors who in some cases apply more severe federal penalties.
- No significant compliance cost for persons or businesses directly affected.
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public.
- No impact on the level of employment in the state.
- No adverse impact on the competitiveness of this state to retain businesses, as the majority of other states (especially neighboring) have already adopted these or similar requirements.